

REMARKS

Claims 17, 20, and 23-28 are pending. Claims 17, 20 and 23-28 stand rejected. Claims 18, 19, 20, 21, 22, and 29-30 are cancelled. Claim 17 has been amended to incorporate the subject matter of claim 20, which has been cancelled, as well as the limitation of the range of water content in the composition of the invention. Support for the range of water content is found in the Examples in the instant text which illustrate multiple embodiments of the present description with water content of the respective compositions ranging from about 61% by weight (based on Example 5) to about 76% by weight (based on Example 6) of water. No new matter is introduced with this amendment in view of MPEP 2163.05 III and *In re Wertheim*, 541 F.2d 257, 191 USPQ90 (CCPA 1976).

Reply to the rejection of claim 20 under 35 U.S.C. § 112.

This rejection is moot in view of claim 20 being cancelled.

Reply to the rejection of claims 17-19 and 23-28 under 35 U.S.C. § 103(a)

These claims are rejected as being unpatentable over the combination of U.S. Patent Nos. 6,010,686 to de la Poterie *et al.* ("de la Poterie"), 5,626,840 to Thomaidēs *et al.* ("Thomaidēs"), and 6,264,933 to Bodelin *et al.* ("Bodelin"). For the following reasons, Applicants respectfully traverse this rejection.

The present invention is based on the surprising discovery of the synergy between the combination of a neutralized, solubilized anionic polyurethane and a second solubilized polymer selected from the group consisting of acrylate, polyacrylate, and methacrylate and polymethacrylate polymers, and at least one solvent, which, when including from about 61 wt.% to about 76 wt% by weight of the composition of water, results in marked

improvement in skin care treatment, as measured by in-vitro SPF efficiency. The dual polymer system of the present invention achieves added SPF protection as well as water resistance. A further advantage is that the composition of the invention is an aqueous solution that may be applied as such to skin, and does not need to be soluble in the solvents and propellants employed in spray on systems.

de la Poterie is directed towards dispersion of particles to make a film on skin, wherein the composition includes an aqueous dispersion of film-forming polymer particles (Abstract). Useful film-forming polymers include synthetic polymers of the polycondensate or radical type, polymers of natural origin, and mixtures thereof (col. 2, lines 30-39). De la Poterie does not teach or suggest neutralized or solubilized polyurethanes. Further, de la Poterie does not teach or suggest the second polymer of the present composition (compositions comprising only the polyurethane are exemplified). Finally, de la Poterie does not teach methods for treating skin for moisturizing, firming and/or UV protection with compositions as presently claimed.

Just as important, de la Poterie does not teach to neutralize the polymer, as this would make it water soluble. It also does not teach the use of a second polymer or the use of a solvent for assisting with the solution. The examiner asserts that de la Poterie does suggest the use of a second polymer, but this second polymer is described as a thickener or suspending aid and not a functional polymer employed for film forming properties.

Thomaides is directed towards polyurethanes with carboxylate functionality for use as hair fixatives (e.g., hairsprays) (Abstract). The polyurethane of Thomaides is soluble or dispersible in water, is prepared from an organic diisocyanate, a diol, and a 2,2-hydroxymethyl-substituted carboxylic acid, and is neutralized with a cosmetically acceptable organic or inorganic base and formulated into a hair fixative composition containing low amounts of volatile organic solvent (Abstract). Thomaides does not teach the use of its polyurethanes in skin care compositions. As noted by the Examiner,

Thomaides, like de la Poterie, does not teach or suggest the second polymer. Therefore, the combination of Thomaides and de la Poterie still is lacking in (1) the disclosure of the second polymer and (2) methods for treating skin for moisturizing, firming and/or UV protection with compositions as presently claimed.

Bodelin teaches cosmetic compositions for keratin fibers (hair - mascara for eyelashes; col. 2, lines 1-12) formed from at least one lamellar filler and an aqueous phase dispersed in a liquid fatty phase containing at least one volatile organic solvent (Abstract). The aqueous phase contains a polymer system comprising at least one filmforming polymer dispersed in the aqueous phase in the form of solid particles (Abstract; col. 1, lines 55-63; col. 2, lines 18-21). Like de la Poterie, the film-forming of Bodelin is chosen from polycondensates (e.g., anionic polyurethanes; col. 2, lines 34-35), radicalgenerated polymers, and polymers of natural origin (col. 2, lines 22-25). Bodelin teaches that its compositions can also include an additional water-soluble film-forming polymer such as polyacrylates and polymethacrylates (col. 4, lines 30-49), but Bodelin also teaches low levels of water in its composition (col 4, lines 26-29) where the total weight of the aqueous phase may range from 1 to 35 wt.%. Bodelin certainly gives no hint to methods for treating skin for moisturizing, firming and/or UV protection with compositions as presently claimed.

As de la Poterie, Thomaides and Bodelin, alone or in combination, do not teach or suggest a method of treating skin using the synergistic combination of the two types of solubilized polymers and water content according to the presently claimed invention, those references cannot be said to render the instant claims unpatentable. Even if the Examiner has stated a *prima facie* case to establish a presumption of obviousness, the surprising discovery of the synergistic combination of the invention presents a secondary consideration that overcomes that presumption. Withdrawal, therefore, of the rejection of the instant claims under 35 § U.S.C. 103(a) is respectfully requested.

It is believed that the above amendments and remarks overcome the Examiner's rejections of the claims. Withdrawal of those rejections is respectfully requested. Allowance of the claims is believed to be in order, and such allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, reading "Louis A. Morris". The signature is written in a cursive style with a large, stylized initial "L".

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